



COR - 0039
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Amendment No. 2 to
Letter Contract No. AF33(600)-37230

Missile Systems Division
Lockheed Aircraft Corporation
Sunnyvale, California

Gentlemen:

Please refer to our Letter Contract dated 29 April 1958 as amended.
The aforementioned documents are amended as follows:

a. Delete Paragraph 4 of Exhibit "A" titled "Progress Payments"
and substitute in lieu thereof the following:

4. Progress Payments:

The Contractor shall be entitled to progress payments hereunder equal to 90% of its actual incurred costs and 100% of amounts paid to subcontractors. In no event, however, shall the total amount paid exceed 95% of the amount authorized for expenditure or obligation in Paragraph 5. of the Letter Contract.

b. It is anticipated that a Fixed Price, Redeterminable Form IV type contract will be negotiated in lieu of a Cost-plus-Fixed-Fee.

c. Advance Payment

1. AMOUNT OF ADVANCE. At the request of the Contractor, and subject to the conditions hereinafter set forth, the Government shall make an advance payment to the Contractor. No advance payment shall be made (i) without the approval of the Contracting Officer as to the financial necessity therefor; (ii) in an amount which together with all advance payments theretofore made, shall exceed the amount stated in paragraph (9) (a) below; (iii) without a properly certified invoice or invoices.

2. RETURN OF FUNDS. The Contractor may at any time repay all or any part of the funds advanced hereunder and shall at any time, if so requested in writing by the Contracting Officer, repay to the Government such part of the unliquidated balance of the advance payment as shall in the opinion of the Contracting Officer be in excess of current requirements. 117

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3. **LIQUIDATION.** The advance payment made hereunder shall be liquidated in the manner set forth in paragraph (9) (d) below and as hereinafter provided. If upon the completion of the contract or the termination thereof, the advance payment made to the Contractor hereunder has not been fully liquidated, the balance thereof shall be deducted from any payments otherwise due or which may become due to the Contractor from the Government, and, if the sum or sums due or which may become due to the Contractor from the Government are insufficient to cover such balance, the deficiency shall be paid by the Contractor to the Government upon demand.

4. **LIEN ON PROPERTY UNDER CONTRACT.** Any and all advance payments made under this contract shall be secured, when made, by a lien in favor of the Government, paramount to all other liens, upon the supplies or other things covered by this contract and on all material and other property acquired for or allocated to the performance of this contract, except to the extent that the Government by virtue of any other provision of this contract, or otherwise, shall have valid title to such supplies, materials, or other property as against other creditors of the Contractor. The Contractor shall identify by marking or segregation all property which is subject to a lien in favor of the Government by virtue of any provision of this contract in such a way as to indicate that it is subject to such lien and that it has been acquired for or allocated to the performance of this contract. If for any reason such supplies, materials, or other property are not identified by marking or segregation, the Government shall be deemed to have a lien to the extent of the Government's interest under this contract on any mass of property with which such supplies, materials, or other property are commingled. The Contractor shall maintain adequate accounting control over such property on its books and records. If at any time during the progress of the work on the contract it becomes necessary to deliver any item or items and materials upon which the Government has a lien as aforesaid to a third person, the Contractor shall notify such third person of the lien herein provided and shall obtain from such third person a receipt, in duplicate, acknowledging, inter alia, the existence of such lien. A copy of each receipt shall be delivered by the Contractor to the Contracting Officer. If this contract is terminated in whole or in part and the Contractor is authorized to sell or retain termination inventory acquired for or allocated to this contract, such sale or retention shall be made only if approved by the Contracting Officer, which approval shall constitute a release of the Government's lien hereunder to the extent that such termination inventory is sold or retained, and to the extent that the proceeds of the sale, or the credit allowed for such retention on the contractor's termination claim, is applied in reduction of the advance payment then outstanding hereunder.

5. **INSURANCE.** The Contractor represents and warrants that it is now maintaining with responsible insurance carriers, (i) insurance upon its own plant and equipment against fire and other hazards to the extent that like properties are usually insured by others operating plants and properties of similar character in the same general locality; (ii) adequate insurance against liability on account of damage to persons or property; and (iii) adequate insurance under all applicable workmen's compensation laws. The Contractor agrees that, until work under this contract has been completed and the advance payment made hereunder has been liquidated, it will (i) maintain such insurance; (ii) maintain adequate insurance upon any materials, parts, assemblies, sub-assemblies, supplies, equipment and other property acquired for or allocable to this contract (except property to which the Government has title under any of the other provisions of this contract); and (iii) furnish such certificates with respect to its insurance as the Contracting Officer may from time to time require.

6. **DEFAULT PROVISIONS.** Upon the happening of any of the following events of default, (i) termination of this contract by reason of fault of the Contractor; (ii) failure of the Contractor to observe any of the covenants, conditions or warranties of these provisions; (iii) appointment of a trustee, receiver or liquidator for all or a substantial part of the Contractor's property, or institution of bankruptcy, reorganization, arrangement or liquidation proceedings by or against the Contractor; (iv) the commission of an act of bankruptcy; the Government, without limiting any rights which it may otherwise have, may, in its discretion and upon written notice to the Contractor, take any or all of the following actions as it may deem appropriate in the circumstances; ~~(a) charge interest on the advance payment outstanding during the period of any such event of default at the rate of six percent (6%) per annum;~~ ^{2 DH} (b) demand immediate repayment of the unliquidated balance of the advance payment hereunder; or (c) take possession of and, with or without advertisement, sell at public sale at which the Government may be the purchaser, or at a private sale, all or any part of the property on which the Government has a lien under this contract and, after deducting any expenses incident to such sale, apply the net proceeds of such sale in reduction of the unliquidated balance of the advance payment hereunder. ^{2 DH}

7. **PROHIBITION AGAINST ASSIGNMENT.** Notwithstanding any other provisions of this contract, the Contractor shall not transfer, pledge, or otherwise assign this contract, or any interest therein, or any claim arising thereunder, to any party or parties, bank, trust company or other financing institution, until the advance payment made under this contract has been fully liquidated.

8. **FINANCIAL INFORMATION.** The Contractor shall furnish to the Contracting Officer signed or certified balance sheets and profit and loss statements quarterly, or at such other intervals as may be required and such other financial information concerning the operation of the Contractor's business as may be requested. The Contractor shall afford to authorized representatives of the Government proper facilities for inspection and audit of the Contractor's financial records and accounts.

9. **DESIGNATIONS AND DETERMINATIONS.**

(a) **Amount.** The aggregate amount of the advance payments to be made hereunder shall not exceed \$100,000.

(b) **Interest Charge.** The Contractor shall charge interest at the rate of five percent (5%) per annum on subadvances or downpayments to subcontractors, and such interest will be credited to the account of the Government. However, interest need not be charged on sub-advances on nonprofit subcontracts with nonprofit education or research institutions for experimental, research or development work.

(c) **Use of Funds.** The advance payment shall be used solely for the purposes of making payments, for direct materials, direct labor, and administrative and overhead expenses required for the purposes of this contract (including, without limitation, payments incident to termination for the convenience of the Government) and properly allocable thereto in accordance with generally accepted accounting principles or for the purpose of reimbursing the Contractor for such payments.

(d) **Liquidation:** If not otherwise liquidated, the advance payments made hereunder and interest charges, if any, shall be liquidated as herein provided. Upon the submission of the final invoice the advanced payment of \$100,000 will be liquidated.

10. **OTHER SECURITY.** The terms of this contract shall be considered adequate security for advance payments hereunder, except that if at any time the Contracting Officer deems the security furnished by the Contractor to be inadequate, the Contractor shall furnish such additional security as may be satisfactory to the Contracting Officer to the extent that such additional security is available.

11. **REPRESENTATIONS AND WARRANTIES.** To induce the making of the advance payments, the Contractor represents and warrants that:

(a) The balance sheet, the profit and loss statement and any other supporting financial statements, furnished to the Contracting Officer, if any, fairly reflect the financial condition of the Contractor at the date shown on said balance sheet and the results of the operation for the period covered by the profit and loss statement, and since said date there has been no materially adverse change in the financial condition of the Contractor.

(b) No litigation or proceedings are presently pending or threatened against the Contractor, except as shown in the above statements.

(c) The Contractor, apart from liability resulting from the renegotiation of defense production contracts, has no contingent liabilities not provided for or disclosed in the financial statements furnished to the Contracting Officer, if any.

(d) None of the provisions herein contravenes or is in conflict with the authority under which the Contractor is doing business or with the provision of any existing indenture or agreement of the Contractor.

(e) The Contractor has the power to enter into this contract and accept advance payments hereunder and has taken all necessary action to authorize such acceptance under the terms and conditions of this contract.

(f) None of the assets of the Contractor is subject to any lien or encumbrance of any character except for current taxes not delinquent, and except as shown in the financial statements furnished by the Contractor to the Contracting Officer. There has been no assignment of claims under any contract affected by these advance payment provisions, or if there has been any assignment, such assignments have been terminated.

(g) All information furnished by the Contractor to the Contracting Officer in connection with each request for advance payments is true and correct.

(h) These representations and warranties shall be continuing, and shall be deemed to have been repeated by the submission of each invoice for advance payments.

12. SUB-ADVANCES. Subject to the prior written approval of the Contracting Officer, funds from the advance payment may be used by the Contractor to make advance payments or down payments to sub-

contractors and materialmen in advance of performance by the subcontractor or materialman. Such sub-advances shall not exceed 75 percent of the subcontract price or estimated cost as the case may be, and the subcontractors or materialmen to whom such advances are made shall furnish adequate security therefor. Unless other security is required by the Contracting Officer, covenants in subcontracts, expressly made for the benefit of the Government, shall provide for a Government lien, paramount to all other liens, on all property under such subcontract.

All other terms and conditions of Letter Contract No. AF33(600)-37230 remain unchanged.

Please indicate your acceptance of the foregoing by signing this Amendment No. 2 and the enclosed two copies thereof and returning the original and one executed copy to the Contracting Officer. The remaining copy is to be retained for your files.

THE UNITED STATES OF AMERICA

BY


Contracting Officer

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ACCEPTED June 17, 1958

LOCKHEED MISSILE SYSTEMS DIVISION (Affix Corporate Seal)

Contractor

BY 

TITLE Assistant General Manager -
Weapons Systems

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